RM. THIRUPPATHI CHETTIAR & ANOR.
v.
TEH KEONG KHENG.

[Court of Appeal (Mathew, C.J. (F.M.), Sir Charles Murray-Aynsley, C.J. (Singapore) and Buhagiar, J.) July 24, 1952]

[Kuala Lumpur — Civil Appeal No. 12 of 1952]

Japanese Judgments and Civil Proceedings Ordinance, 1946 — Executors — Agreement for the sale of land subject to conditions — Civil Procedure Code, s.s. 467(i)(f), 469(a).

This was an appeal from the judgment of Wilson, J. reported at p. 46 ante.

During the Japanese occupation of Malaya, by an agreement in writing dated June 1st, 1945, the administrator with will annexed agreed to sell land subject to his obtaining the approval of the Japanese High Court and subject to the defendant obtaining the approval of the Japanese Governor. The approval of the Court was obtained and an application to the Governor was made but the approval was never received, as soon after, the Japanese surrendered. In November 1945 the plaintiffs became administrators of the deceased and they sought a declaration that the agreement was null and void and of no effect on the grounds that: (i) the application to sell was made ex parte and no notice of it was served on or given to any person beneficially interested: (ii) the order of the Japanese did not approve the sale to the defendant specifically; and (iii) the approval of the Japanese Governor was not obtained.

The learned trial Judge held that he had no power in these proceedings to set aside the order of the Japanese Court and that the appropriate machinery was to institute proceedings under the Japanese Judgments and Civil Proceedings Ordinance. No such proceedings were taken under this Ordinance. The claim was dismissed. Against this decision the plaintiffs appealed. On the appeal the Counsel for the appellants relied on two points (i) the application to the Japanese Court for permission to sell was ex parte and therefore a nullity, and (ii) the approval of the Japanese Governor to sale was never obtained.

Held, dismissing the appeal (i) that the learned trial Judge held rightly that the appellants could not by means of these proceedings circumvent the provisions of the Japanese Judgments and Civil Proceedings Ordinance, 1946, and that the Judgment of the Japanese Court must still be deemed to be effective; (ii) that the Japanese Governor of Selangor never refused approval of the purchase.

COURT OF APPEAL.

R. V. H. Rintoul for the appellants.

H. Y. Teh for the respondent.

Cur. Adv. Vult.

The Judgment of the Court was delivered by Mathew, C.J., (F.M.), with which Sir Charles Murray-Aynsley, C.J., (Singapore), and Buhagiar, J., concurred.

Mathew, C.J. (F.M.) : — The facts in this case are fully set out in the judgment of the learned trial judge against which judgment the appellants are now appealing. The main purpose of the case was to obtain a declaration that a written agreement concerning the sale of certain lands to the defendant dated the 1st June, 1945, was null and void and of no legal effect.

Counsel for the appellants relies or two points : (i) the application to the Japanese Court for permission to sell was *ex parte* and therefore a nullity, and (ii) the approval of the Japanese governor to the sale was never obtained.

As regards the first point, the learned trial judge held that he had no power in these proceedings to set aside the order of the Japanese Court. The appropriate machinery for enabling the Court to do this is provided under the Japanese Judgments and Civil Proceedings Ordinance No. 29 of 1946. No proceedings were taken under this Ordinance. The trial judge held rightly in my opinion that the appellants could not by means of these proceedings circumvent the provisions of Ordinance No. 29 of 1946, and that the judgment of the Japanese Court must still be deemed to be effective.

As regards the second point, the Japanese governor of Selangor never refused approval of the purchase. An application had been made to him for his approval, but before the approval had been obtained the war with Japan was over and the Japanese governor had left the State.

The appellants are setting up the default of their predecessors in title as a basis for this claim. The order of the Japanese Court was obtained by them and is binding on the present appellants.

I would dismiss the appeal with costs, and order that the deposit in Court be paid out to the respondent against his costs.

Appeal dismissed.

AV. PL. PALANIAPPA CHETTIAR
v.
KOH KEH HONG.

[Court of Appeal (Mathew C.J. (F.M.), Sir Charles Murray-Aynsley, C.J. (Singapore) and Wilson, J.) July 24, 1952]

[Kuala Lumpur — Civil Appeal No. 9 of 1952]

Land — Sale of — Mortgage outstanding — Attornment of tenants to purchaser — Registrable transfer — Variation of written contract by conduct — Abandonment of relief prayed for — Discretion of Court.

This was an appeal against the judgment of Abbott, J. reported sub nom Koh Keh Hong v. Av. Pl. Palaniappa Chettiar (1952) M.L.J. 29.

In this case the defendant-appellant agreed to sell to the plaintiff three parcels of land. A document of transfer was executed by the defendant and given to the plaintiff. The purchase price was handed over to Mr. Yong Sze Lin who held it as stake holder. The lands